YEARBOOK OF INTERNATIONAL & EUROPEAN CRIMINAL AND PROCEDURAL LAW
Vol.1, n.1, 2022 Article 5

European criminal cooperation: Confiscation and protection of human rights in the post Brexit period

John Phil

DOI:10.5281/zenodo.10576936

EUROPEAN CRIMINAL COOPERATION: CONFISCATION AND PROTECTION OF HUMAN RIGHTS IN THE POST BREXIT PERIOD

DOI:10.5281/zenodo.10576936

John Phil, PhD. Legal advisor, UK

Abstract: This work tries to analyze the international cooperation models in the field of seizure and confiscation that are defined in a limited space through the Conventions of the Council of Europe of 1990 and 2005. We proceed with the latest Regulation (EU) 2018/1805 as well as with the agreement on trade and cooperation of 24 December 2020. Note the points of reference and analysis of all three models and operating schemes on the protection of human rights. We also focused on the post-Brexit situation where the United Kingdom, despite its exit from the Union hall, will have to comply with the standards of protection of rights as established by Union law, interpreted by the CJEU and with the aim of continuing the criminal cooperation with the other Member States of the Union.

Keywords: freezing and confiscation, Conventions of the Council of Europe, Regulation (EU) 2018/1805, EU-UK Trade and Cooperation Agreement (TCA), protection of human rights, ECtHR jurisprudence, European Arrest Warrant (EAW).

Introduction

Crime prevention, related types of offenses, money laundering (Stessens, 2000; Mitsilegas, 2003; Mitsilegas, Gilmore, 2007; Muller, Kälin, Goldsworth, 2007; Unger et al., 2014; Dion, 2015) and confiscation of money (Thunberg Schunke, 2017)[1] from illegal activities are activities that enter into the regulatory and punishment context at international, European and national level as an activity against crime (Fernandez-Bertier, 2016). The related penalties of a prison nature are important punishment actions that many times do not however hit an involved group, a certain criminal organization and/or managerial actors with skilled operational skills (Lelieur, 2015).

The use of reaction tools on the assets of criminals prevent the provision of necessary economic resources and make it possible to pave the way for the punishment of victims of crime through compensation and restitution of "property" acquired in a criminal manner (Kruisbergen, Kleemans, Kouwenberg, 2016).

Thus, seizure (or freezing)[2] and confiscation are used as a protection against these types of crimes and as punishment, i.e. inalienable protagonists for the protection of human rights on a

1According to the European Commission: "(…) confiscation is a final measure designed to stop criminals from accessing property obtained by breaking the law. The property is taken away permanently from the criminal or their accomplices (…)".

2The notion of freezing is used in acts of European Union law while, at least as regards international law and in national law, seizure is used.

global level and beyond. The aim is the prohibition on the transfer, conversion and disposal or movement of goods purchased illegally and is configured as a deprivation of ownership of any type of property that can take different forms[3].

The term confiscation includes a heterogeneous list of hypotheses that are specified in the national system. We can speak of confiscation of products deriving from crimes such as direct confiscation and/or of goods where the value corresponds to such products, so we are referring to confiscation by equivalence. There are also other figures that apply to other types of serious crimes where the offender cannot justify with suitable and lawful means the origin of certain goods of disproportionate value, respecting the work of the person involved, that is the analogous income and/or economic activity carried out. In that case we are talking about extended confiscation which has an extended nature. This is the result of criminal proceedings initiated for crimes that can produce economic benefits (Girard, 2017)[4].

The criminal proceedings could have ended with a definitive sentence in the event that the suspect or accused could have

3The two definitions are based on the Conventions of the Council of Europe, in Regulation (EU) 2018/1805 and the agreement on trade and cooperation.

4Council Framework Decision 2005/212/JHA on the confiscation of assets, instruments and proceeds of crime, of 24 February 2005, in OJ EU L 68 of 15 March 2005, p. 49ss, "(...) (these are crimes such as counterfeiting of coins, money laundering, human trafficking, aiding and abetting illegal immigration, sexual exploitation of minors, child pornography, illicit drug trafficking and terrorist offenses, if committed in the European Union (…)".

been tried, so in this case we are faced with the confiscation without conviction and the related assets or proceeds (Simoneto, 2015; Evers, 2018)[5] transferred directly and indirectly by a suspect or a third party accused as a type of confiscation against third parties (Boucht, 2019; Fernandez-Bertier, 2019).

We have noticed interventions of a criminal nature at a national level which is not part of our analysis but also of international law and even more of the EU criminal law where we note various interventions on a functional nature and extended by mechanisms available to national legal systems which as a purpose they have not only the capture and punishment of those involved but also to reinvigorate the sector of criminal cooperation between States[6].

Seizure and confiscation are likely to infringe on the property rights of others. Therefore, the measures adopted are imposed

5The proceeds were also used in Directive no. 42/2014, of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127, 29.4.2014, p. 39–50, to which reference should be made: "(...) (art. 2, no. 4 "income": any economic advantage derived, directly or indirectly, from crimes, consisting of any asset and including subsequent reinvestments or transformations of direct income and any economically measurable advantage (...)". According to article 18, no. 5: "(...) if the issuing authority has issued a confiscation order, but not a freezing order, the executing authority may, as part of the measures referred to in paragraph 1 (...) measures necessary for its execution in the same way as a national confiscation order issued by an authority of the executing State (...), decide to freeze assets interested parties on their own initiative, in accordance with their national law, with a view to the subsequent execution of the confiscation order (…)".

6In the context of international law and especially in the circle of the UN we can also refer to the Convention against illicit trafficking in narcotic drugs and psychotropic substances of 20 December 1988 (art.5) and the Convention against transnational organized crime (artt. 12- 14).

before the delivery of a final sentence. The search for a balance between the need to fight organized crime (Čentéš, Beleš, 2018) or not and as the final objective of protecting human rights is therefore mandatory.

Current research enters the circle of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990. The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on Financing of terrorism of 16 May 2005, organized by the Council of Europe. And finally, Regulation (EU) 2018/1805 on the mutual recognition of freezing and confiscation orders[7], of the European Union. In this spirit we would also consider the mechanism inherent in relations between the European Union and the United Kingdom following Brexit, so we are talking about the post Brexit period which is re-regulated the EU-UK Trade and Cooperation Agreement (TCA) of 24 December 2020 and entered in force on 1 May 2021 (Tatham, 2021). All the relative legislation is presented as a model of cooperation and functioning which has as its

7However, mutual recognition is excluded for measures "(...) issued in the framework of a civil or administrative proceeding (...)", as established in art. 1 of Regulation. This is a category that includes the expropriation of assets not connected to the related offenses. According to recital no. 13 of the proposal of the Regulation: "(...) Freezing orders and confiscation orders issued in the framework of civil or administrative proceedings are excluded from the scope of application of this Regulation; and in the final version Freezing orders and confiscation orders issued in the framework of proceedings in civil or administrative matters should be excluded from the scope of this Regulation (...)".

objective the protection of fundamental rights from criminal attitudes (Panzavolta, 2019)[8].

The Conventions of 8 November 1990 and 16 May 2005 on the seizure and confiscation of the proceeds of crime of the Council of Europe

The fight against criminal phenomena, such as organized crime, terrorism, trafficking in human beings and drugs are the points

8ECHR, Paraponiaris v. Greece of 25 September 2008, Gogitidze and others v. Georgia of 12 May 2015, De Tommaso v. Italy of 23 February 2017. The recognition of the criminal nature of the measures affirmed and was based on article 6 (relating to the right to a fair trial, as regards its criminal side), article 7 (*nulla poena sine lege*) of the ECHR, as well as article 4 of Protocol No. 7 (right not to be judged or punished twice). In this spirit, we also report from the European Court of Human Rrights (ECtHR) the old Welch case of 1995 where for the first time the criminal character of a form of confiscation of an extended nature was recognized. In particular, the confiscation in the English legal system is based on a series of aspects from which the basis for the punishment of this sanction would emerge, alongside that of a preventive nature. The substantial notion that dates back to the ECtHR jurisprudence allows: "(…) looking behind appearances at the realities of the situation (...)" (Welch v. United Kingdom of 9 February 1995, par. 27). The confiscation is connected with a crime and a conviction for drug trafficking is assumed. With regard to the nature and purpose of the measure, it is stated that the sanction in the case examined was based on the Act of 1986 and has brilliantly overcome the inadequacy of the previous forfeiture instruments. This allows the courts to subtract the profits that had been converted into other assets. It is a legislation that gives broad confiscation powers that simultaneously pursue the punishment of the offender. We can say that the preventive and reparative purposes coexist with the punitive one and can be taken into consideration as elements of a real punishment. In various sentences of the English courts this sanction as a type of penalty, although it is not decisive, as happens in the case of the gravity of the sanction. The decisive aspects are: "(…) the presumptions that all the goods purchased in the previous six years after the related proceedings represent the proceeds of the drug trafficking unless the offender proves otherwise; the fact that the confiscation order is directed against the profits involved in drug trafficking and is not limited to current enrichment or profit; the discretion of the judge to take into consideration the degree of guilt of the accused in fixing the amount to be confiscated; and the possibility of applying a prison sentence in the event of the offender's insolvency. These are all elements that provide a strong indication of a punitive regime (...)" (Phillips v. Royaume-Uni of 12 December 2001, par. 36ss. Grayson & Barnham v. The United Kingdom, par. 37).

that are taken into consideration to create a convention on money laundering, search, seizure and confiscation of the proceeds of organized crime by the Council of Europe[9]. The first step was taken by the Organization of the United Nations that created a basis of standards ensuring the effective international cooperation between judicial and police authorities in world level[10].Within this spirit, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime was created, signed in Strasbourg on 8 November 1990 (Nilsson, 1991)[11].

A convention that has as its main objective to affect the proceeds of crime and the related economic advantages which may include tangible or intangible, movable or immovable property rights as well as legal documents or various types of instruments that demonstrate the existence of the right to property or other rights on the values mentioned according to art. 1, lett. a) and b)) of the Convention.

9Explanatory Report to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 8 September 1990, p. 1.

10See the Recommendation No. R (80) 10 of the Committee of Ministers to Member States on measures against the transfer and the safekeeping of funds of criminal origin, 27 June 1980 "(...) the governments of the Member States were urged to adopt control measures related to banking services, as for example in the case of verifying the identity of customers on the occasion of certain transactions, continuing with the training of employees for this purpose and the granting of safety deposit boxes only to subjects with whom there were already links or who were identified as worthy of trust (…)".

11Entered into force on September 1, 1993 following the first three ratifications, to date it has been ratified by all Member States of the Council of Europe and by two non-Member States (Australia and Kazakhstan).

According to art. 2, par. 1 the States are committed to adopting the relative legislative and other measures that are necessary to allow the confiscation of proceeds or assets whose value corresponds to that of the proceeds. One of the objectives remains the conduct of investigations with the aim of seizure according to art. 3 and 11 thus introducing in its own legal systems the related types of offense relating to money laundering[12].

The Contracting State receives a confiscation request from another Contracting State to be executed in its own territory following thus the request and submitting it to its competent authorities to obtain a confiscation order to be executed in the near future[13]. As for the procedures obtained to achieve the confiscation, they will be governed by one of the States requesting the confiscation and according to art. 14 of the Convention by the requested State which is bound by the relevant findings of merit resulting from a conviction or a judicial decision made in the requesting State.

This type of cooperation obviously remains the limit of being refused due to concrete reasons that refer to the low importance of the case according to the assessment of the requested State and/or due to the political or fiscal nature of the crime in relation to the submission of the request and the failure provision in the

12Art. 6 of the Convention.
13Art. 13 of the Convention.

law of the requested State of the confiscation for the crime that is proceeding or the incompatibility of the request with the principles of the law of the requested State relating to the limits of confiscation as provided for by art. 18 of the Convention (Billet, Turmo, 2020).

The phenomenon of money laundering at the European level is not a new one. From international law and at the national level it has always been connected with the financing of international terrorism so during the years the Convention of 1990 needed to be revised in the face of new realities that emerged[14]. The new result of the worrying and ever-evolving phenomenon was the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism which was signed in Warsaw on 16 May 2005[15].

Certainly the way of thinking and fighting towards money laundering was the attention to the ways in which terrorist groups obtain the necessary economic resources concerning access to bank accounts or information.

Also in this case, the commitment of the Contracting States remains mainly to introduce legislative measures and not only to

14Explanatory Report to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 16 May 2005, p. 1.

15Entered into force on 1st May 2008 following the first six ratifications. Ratified by 37 member states of the Council of Europe and updated through an additional protocol opened for signature on 22 October 2015 and entered into force on 1 July 2017.

allow the confiscation of the proceeds of crime and assets in the event that the value corresponds to the proceeds according to art. 3, par. of the Convention of Warsaw. In the same spirit, the convention processors continue with the conduct of investigations and the adoption of seizure measures[16], as well as with the introduction of *ad hoc* cases, i.e. crimes relating to money laundering[17].

Finally, the Contracting States must cooperate with each other especially at the level of investigations and confiscations according to art. 15. As also the grounds for refusal are foreseen, which in reality are those preceding the 1990 Convention according to art. 28 of the Convention (Klip, 2021).

The meeting point for the protection of human rights between the Convention of Budapest and Warsaw

The question is what kind of human rights protection dates back from the convention of Budapest and Warsaw for those affected by confiscation orders and investigations for effective legal remedies to protect their rights as well as the recognition of judicial sentences taken in the requesting state for what concerns the rights claimed by third parties according to art. 22 of the Convention of 1990 and art. 32 of the Convention of 2005[18].

16Art. 4 of the Convention of Varsavia.

17Art. 9 of the Convention of Varsavia.

18The hypotheses of refusal are also typified, such as the opposition of the provision to the public order of the requested State.

According to art. 18 of the Convention of 1990 and art. 28, par. 1 of the convention of 2005 the identification of the reasons for refusal of cooperation are points of wide discussion above all because they refer to the opposition of the measure with respect to the fundamental principles of the legal system of the requested State, i.e. *ne bis in idem* (Simoneto, 2017) as well as of the order public[19].

There is a certain contradiction of the fundamental principles given that the two Conventions were drawn up within the framework of the Council of Europe. An organization that deals with the promotion of the ideals and principles that are the common heritage of the Member States, the development of human rights and fundamental freedoms. The fundamental principles of the legal system of the requested State also include

19See the Explanatory Report to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, cit., p. 19, and Explanatory Report to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, cit., p. 33, as a formula that does not include the essential interests of the individual. Within this spirit, we also recall from the ECtHR, the Labita case, where the Court recognized the compatibility with the ECHR in relation to prevention measures only if they are based on an assessment of the social dangerousness of the recipient. So they are not at odds with the principles of the ECHR. The fact that the preventive measures are applied to individuals suspected of belonging to mafia activities even before their conviction, tend to prevent the carrying out of criminal acts after ascertaining the danger of the person who is the recipient. As a justificatory assumption, an ablation intervention is presented which is not criminal in nature but instrumental to the protection of public interests (Labita v. Italy of 6 April 2000). After many years the orientation of the ECtHR is the same as we can see in the case: Bivolaru and Moldovan v. France of 23 March 2021. The Court spoke for a cooperation mechanism of a qualified nature inspired by the spirit of the EU and above all by mutual recognition, where each evaluation is free from any exceptional situation. The ECtHR in this case followed the enhancement of the extradition clause in question as well as the related constitutional parameters of an internal nature in reference.

cases in which the procedure is based on the request for confiscation that does not respect basic rules of a procedural nature such as those that can be provided by articles 5 and 6 of the European Convention of Human Rights (Villiger, 2020). Of course there are reasons to believe that the life of a person in danger and the burden of proof by the requesting State is regulated in a manner incompatible with the principles of the requested State[20].

Public order as a limiting cause for a State before certain judicial proceedings has no basis for analysis and clarification from the two conventions. This is a concept that applies to international judicial cooperation and refers to the traditional limit of the recognition of foreign judgments and the application of foreign law by a national judge. A national judge based on the principles of national law and in particular on the protection of fundamental rights.

As regards the *ne bis in idem* (Heimrich, Scharpf, 2022)[21]

20Explanatory Report to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, cit., p. 18 and Explanatory Report to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, cit., p. 33.

21CJEU, C-129/14 PPU, Spasic of 27 May 2014, ECLI:EU:C:2014:586, published in the electronic Reports of the cases. C-505/19, Bundesrepublik Deutschland (notice rouge d'Interpol) of 12 May 2021, ECLI:EU:C:2021:376, published in the electronic Reports of the cases. The CJEU highlighted once again the legal rules on the matter of ne bis in idem which are bound by the Member States even in the hypothesis in which a third State had the intention of subjecting the objects in question to criminal proceedings for the same facts regarding the Schengen area. C-488/19, JR of 17 May 2021, ECLI:EU:C:2021:206, not yet published, par. 60, which is affirmed that: "(...) the hypothesis of an extension of similar qualified protection also appears suggestive with respect to the decisions issued in the United

reference is made to the interpretation provided to domestic law and the limits set by all national legislation[22].Therefore, the protection of fundamental rights finds space under the two Conventions and it is asked whether they are effective to protect the rights involved with the confiscation.

There is a small difference between the pre-existing and called provisions relating to the legal means of protection according to art. 5 of the Convention of 1990 and art. 8 of Convention of 2005 as well as those on the grounds for refusal[23]. The article

Kingdom, in the presence of requests made to a Member State by other third States, on the basis of the particular intensity of cooperation with the British authorities and the provisions of the ASCC dedicated to the principle in question; (...) jurisdiction of the Court regarding the interpretation and implementation of the agreement (...)". The CJEU unilaterally followed the relationship between the Union and the United Kingdom, benefiting from the protection of the principle of ne bis in idem by the authorities of the Member States. C-665/20 PPU, X (Mandat d'arrɤt europɪen-Ne bis in idem) of 29 April 2021, ECLI:EU:C:2021:339, not yet published. The CJEU in this case has interpreted art. 4, no. 5 of the Decision 2002/584/JHA as an impediment reason of an optional nature concerning the existence of previous judicial decisions of a definitive nature in a third State where the Member State has transposed this provision. The respective authorities must enjoy a margin of evaluation of a logical and concrete nature that allows an appreciation of criminal responsibility based on a correct balance between the need to punish and the need to protect the person concerned. Art. 50 CFREU is an appropriate regulatory reference point and is expressly limited to judicial decisions adopted within the Union. Rules that are provided for from art. 54 of the Accord of Schengen which involves the authorities of the Schengen system. As well as art. 4 of the protocol 7 ECHR which does not permeate the cross-border dimension of the principle. Circumstances that are not adopted under the rules of TCA since there is no general clause on the ne bis in idem. It contains only provisions aimed at facilitating the coordination of the respective criminal jurisdictions intended to define the criteria for the exercise of the relevant jurisdictions.

22Explanatory Report to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, cit., 19 and Explanatory Report to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, cit., 34.

23According of art. 22 of the Convention of 1990 and art. 32 of Convention of 2005.

refers to the review of a judicial authority. As also stated in the Explanatory Reports:

"(…) remedies should allow for a hearing in court, that the interested party has the right to be assisted or represented by a lawyer and to present witnesses and other evidence, and that the party has a right to have the court decision reviewed (…) In any case, minimum rights of the defence are safeguarded by the Convention for the Protection of Human Rights and Fundamental Freedoms (...)"[24].

The type of protection it is ensured by a third and independent body as it is up to conducting a technical assessment with the purpose of ascertaining whether the right that asserts itself as the owner of a certain subject relates to a confiscated asset that is violated or less.

However, it is not the same with regard to refusal. Because the type of cooperation envisaged by the two Conventions is based on government authorities and is based on a political basis. As a consequence, a cooperation can take place where there is an agreement between the executives of the States concerned and who enjoy wide discretion in the matter and that judicial mechanisms are envisaged that oblige a recalcitrant State to cooperate. But can we talk about compulsory collaboration and/or necessarily? And on which rules is it established?

It is up to the executive of the requested State to determine whether there is a reason for not accepting the request from the requesting State. Given the nature of a political body in the

24Explanatory Report to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, cit., p. 9, and Explanatory Report to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, op. cit., p. 16.

exercise of discretion oriented towards the defense of fundamental rights, the risk of encouraging a violation of rights based on "good neighborliness" with the requested State remains open.

Freezing and confiscation measures and the Regulation (EU) 2018/1805

The Regulation (EU) 2018/1805 entered into force on 19 December 2020 (Oliveria e Silva, 2022)[25], replacing both the Framework Decision 2003/577/JHA (Vermeulen, 2017)[26], and the Framework Decision 2006/783/JHA (Ligeti, Simonato, 2017)[27].

The novelty brought by the regulation is that it is based on the principle of mutual recognition, given that previously all interventions in this area were carried out through framework

25Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders, PE/38/2018/REV/1, OJ L 303, 28.11.2018, p. 1–38.

26Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, OJ L 196, 2.8.2003, p. 45-55.

27Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, OJ L 328, 24.11.2006, p. 59-78, where: "(...) the possibilities of refusing the execution of the confiscation are significantly reduced, clarifying how the principle of mutual recognition should be applied only to the definitive measures-and not to the prodromal and instrumental measures to the confiscation itself-issued by judicial authorities-non-administrative-of the Member States, upon the outcome of criminal proceedings (...) provides for the duty for each individual Member State to inform the Secretary General of the Council on the competent authorities both to issue a confiscation order and to receive it (...) subsequently make all the information received available to the Member States in such a way that it can be provided to the competent authorities in need (…)".

decisions or directives, of a mandatory nature for the Member States.

The legal basis of the Regulation is art. 82, par. 1, lett. a) TFEU (Schwarze, Becker, Hatje, Schoo, 2019) where it is expected that the European Parliament and the Council according to the ordinary legislative procedure adopt measures aimed at defining rules and procedures to ensure recognition throughout the Union and of any type of judgment and judicial decision. However, the type of act to be used is not specified, leaving a large margin to the choice of the European Commission in the role of holder of the power of legislative initiative and in the European decision-making system.

The Regulation activates the work of regulatory standardization and mere approximation to internal legislation[28]. This is a path oriented towards the political level given that in this way the position of the Union is strengthened in the field of judicial

28The European Commission tried to specify the act by stating that: "(...) should not set a precedent for future legal acts of the Union in the field of mutual recognition of judgments and judicial decisions in criminal matters (...) the choice of legal form of future legal acts of the Union should be carefully assessed on a case-by-case basis, taking into account, among other factors, the effectiveness of the legal act and the principles of proportionality and subsidiarity (…)" (recital no. 53). No other forms of the Regulation have developed in practice and on the subject which have preferred significant reasons, i.e. connected to overcoming the excessive differences between national legal systems. The delays noted by the Member States in the transposition of directives is a topic that dates back many years in the history of the EU and especially in criminal matters with various justifications or not. The road to a new applicative Regulation relating to the principle of mutual recognition is that in the search for electronic evidence as we have already seen the proposal for a regulation of the European Parliament and of the Council on European orders for the production and preservation of electronic evidence in criminal matters, COM (2018) 225 final.

cooperation in criminal matters and on the other hand there is an exhaustion of national legislations (Bouchl, 2013; Barnard, Peers, 2017; Simoneto, 2017)[29].

Freezing and confiscation orders issued by the authorities of a Member State in the context of criminal proceedings are necessarily transmitted to the competent authorities of the executing Member State together with certificates identifying the assets that will be seized or confiscated in accordance with articles 4 and 14[30].

The Regulation also applies the principle of mutual recognition as required by the overcoming of double criminality with reference to 32 categories of crime according to art. 3. The authorities of the executing Member State are obliged to carry out the measures received in accordance with art. 7 and 18 except that there are no reasons for non-recognition and non-execution typified in the Regulation according to articles 8 and 19 (Patricio, 2014)[31].

29The regulation requires the execution of confiscation orders without conviction even to Member States that do not intend to adopt this type of decision in their own legal systems. According to the Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, op. cit.. According to Barnard, Peers: "(…) confiscation without conviction should already be part of the crime fighting tools available to Member States (…)".

30The hypothesis of civil or administrative confiscation, as provided for by art. 1, par. 4.

31Council Framework Decision 2002/584/JHA on the European arrest warrant and surrender procedures between Member States-Statements by some Member States on the adoption of the Framework Decision, of 13 June 2002, in OJ L 190 of 18 July 2002, pp. 1-20. See also the last case of the CJEU: C-314/18, SF of 11 March 2020, ECLI:EU:C:2020:191, published in the electronic Reports of the cases.

Regulation (EU) 2018/1805 and protection of human rights

The Regulation in analysis is a far-reaching act of protection of human rights. The preamble already states that the rights of those affected by the freezing or confiscation order must be guaranteed. The Regulation does not change the obligation to respect fundamental rights and the principles set out in art. 6 TEU (Kellerbauer, Klamert, Tomkin, 2019). As well as art. 1, par. 2 reiterates that the Regulation does not modify the obligation to respect fundamental rights and legal principles set out in art. 6 TEU (Liakopoulos, 2020). Therefore the Regulation remains faithful to the Charter of the Fundamental Rights of the European Union (CFREU) and of the ECHR (recital n.17) (Ligeti, Simonato, 2019)[32]. Within this spirit are also included the procedural rights recognized by the directives adopted

32They refer to the relative prohibition of discrimination based on sex, race, ethnic origin, religion, sexual orientation, nationality, language, political opinion or disability. In particular, the ECtHR has so far offered us a general orientation towards forms of confiscation without conviction. Not only because their substantial compatibility with the basic principles of the ECHR is confirmed but because these measures are basic principles in criminal matters and are highlighted by a broad and general supranational orientation that is favorable towards the recognition of the use of the civil forfeiture as a type of criminal policy strategy against serious criminal phenomena: "(...) having regard to such international legal mechanisms as the 2005 United Nations Convention against Corruption, the Financial Action Task Force's (FATF) Recommendations and the two relevant Council of Europe Conventions of 1990 and 2005 concerning confiscation of the proceeds of crime (ETS No. 141 and ETS No. 198 (...), the Court observes that common European and even universal legal standards can be said to exist which encourage, firstly, the confiscation of property linked to serious criminal offences such as corruption, money laundering, drug offences and so on, without the prior existence of a criminal conviction (…)".

between 2010 and 2016 which apply the procedures contemplated by the Regulation (recital no.18) (Soo, 2017; Riehle, Clozel, 2020; Glerum, 2020; Beck, Pivaty, Beazley, Daly, Ter Vrugt, 2021)[33].

Central remain articles 8 and 19 of the Regulation which report the reasons for non-recognition and non-execution of the freezing and confiscation order. Among the reasons enumerated refer to: the opposition of the provision *al ne bis in idem* (Lelieur, 2013), the existence of rules on the determination or limitation of criminal liability relating to freedom of the press and/or freedom of expression in other media and the existence in some situations that can be characterized as exceptional and for serious reasons based on objective and specific elements that the execution of the confiscation order remains a clear violation of a right already established by CFREU (Mak, 2012; Saffian, Düsterhau, 2014; Lebrun, 2016). In the case of a confiscation order, the hypothesis of proceedings *in absentia* as well as the

33Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings, of 20 October 2010, in OJ L 280 of 26 October 2010, pp. 1-7, Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings, of 22 May 2012, in OJ L 142 of 1 June 2012, pp. 1-10, to Directive 2013/48/EU of the European Parliament and of the Council on the right to use a lawyer, in OJ L 294 of 6 November 2013, pp. 1-12. Directive (EU) 2016/343 of the European Parliament and of the Council on the presumption of innocence and the right to be present at the proceedings, in OJ L 65 of 11 March 2016, pp. 1-11. Directive (EU) 2016/800 of the European Parliament and of the Council on procedural guarantees for suspected or accused minors, in OJ L 132 of 21 May 2016, pp. 1-20 and Directive (EU) 2016/1919 of the European Parliament and of the Council on admission to legal aid, in OJ L 297 of 4 November 2016, pp. 1-8.

non-participation is not attributable to the recipient of the order. Art. 32 recognizes the right of those affected by the provision to be informed and art. 33 includes the subjects who can make use of effective remedies in the executing Member State against the decision on recognition and execution even if the substantive reasons are based on the provision and cannot be contested.

We can say that this is a particular model of cooperation based on the principle of mutual recognition which allows us to argue that the protection of fundamental rights necessarily passes to the control of the judicial authorities of the Member States (Suominen, 2011; Janssens, 2013; Miettinen, 2013; Klimek, 2017). In reality, it is up to the judicial body to resolve the related dispute to all the situations just referred to.

The reason for refusing recognition and execution must be fundamental and respect human rights. The objective is judicial cooperation in criminal matters as well as the framework decision on the European Arrest Warrant (EAW) which provides for a ground for refusal relating to ne bis in idem and one relating to proceedings *in absentia* which contemplated an order relating to the violation of other hypothesis of fundamental rights.

Within this spirit, we recall Directive 2014/41EU on the European criminal investigation order that it notes the provision of refusal for a general reason as provided for by art. 11, par. 1,

lett. F. By the way it is stated that:

"(...) there are serious reasons to believe that the execution of the investigative measure requested in the context of the Investigation European Order in criminal matters (IEO) (Rusu, 2016; Kusak, 2019; Carrera, Stefan, Mitsilegas, 2020; Tosza, 2020; Maymir, 2020; Szijártó, 2021; Bloks, Van Den Brink, 2021)[34] is incompatible with the obligations of the executing State pursuant to article 6 of the TEU and the Charter (...)"[35].

On the other hand, the Regulation does not have the same mandatory character as the reference to existence and in exceptional situations and for serious reasons is based on objective and specific elements. Furthermore, the execution of the confiscation order provides for particular circumstances of the case and a clear and manifest violation of a fundamental right provided for by the CFREU and in particular to an effective remedy, an impartial judge who respects the rights of the defense.

We are talking about two different standards, since the first refers to a violation with a minimum level of severity and the second to exceptional situations and a clear violation of the CFREU. In other words, to elements that allow the affirmation

34The Investigation European Order in criminal matters (IEO) does not apply to seizure for the purposes of confiscation but remains governed by the Framework Decision 2003/577/JHA according to art. 39 that according to the Regulation of 2018, Member States are bound as of December 19, 2020. The Regulation takes into consideration the conditions of issue and transmission of a freezing order provided for in art. 6 of the Directive 2014/4/ UE also applying the same conditions as regards freezing for evidentiary purposes, as well as confiscation. To simplify the procedure with respect to Framework Decision 2003/577/JHA, the freezing order is issued using a standard model and no more than a "certificate" accompanying the national decision that must be carried out.

35Directive 2014/41/EU of the European Parliament and of the Council on the European Investigation Order in criminal matters, of 3 April 2014, in OJ EU L 130 of 1 May 2014, pp. 1-36.

to highest standards.

The basis for this high level can be seen in the jurisprudence of EAW (Liakopoulos, 2019) and it is recorded in the Aranyosi and Căldăraru cases (Mansell, 2011; Tinsley, 2013; Smith, 2013; Sybesma-Knol, 2014, Foster, 2014; Vervaele, 2015; Bachmaier, 2015; Swoboda, 2015; Gàspàr-Szilàgy, 2016; Bovend'eertdt, 2016; Guiresse, 2016; Niblock, 2016; Broberg, Fenger, 2016; Anagnostaras, 2016; Lenaerts, 2017)[36]. The Court of Justice of the European Union (CJEU) actually recognized the execution of the EAW which can be abandoned where elements of systemic or general deficiency are noted and it is respected the prohibition of inhuman or degrading treatment from the issuing

36CJEU, C-578/16, C.K. and others v. Republika Slovenija of 16 February 2017, ECLI:EU:C:2017:127, joined cases C-404/15 and C-659/15, P. Aranyosi and R. Căldăraru of 5 April 2016, ECLI:EU:C:2016:198, above the cited cases published in the electronic Reports of the cases. In particular the attitude of the Luxembourg courts in relation to the interpretation of the principle of mutual recognition and mutual trust in civil procedural matters is intended to align with the "warnings" enucleated by the European Court in Avotinš. The CJEU has gone further on the mutual recognition and has been based on another interpretative way stating that the art. 3 of the ECHR and 4 of the CFREU must be interpreted: "(...) in a convergence between (...)". In particular the Advocate General Yves Bot has declared that: "(...) In the Advocate General's search for balance he considers first whether article 1(3) FDEAW constitutes a ground for non-execution of an arrest warrant. He rejects such a notion for the following three reasons. First off, interpreting article 1(3) as a non-execution ground would run counter to the phrasing of that Article, which due to its place and wording does not express a non-execution ground, but rather the principle of mutual trust. Secondly, such a notion would not be in agreement with the EU legislator's intent to create a system of surrender with exhaustively enumerated non-recognition grounds, whereby, in addition to the grounds in articles 3, 4, and 4a FDEAW, only in the exceptional circumstances described in Recitals (10) and (13) surrender can be suspended or removal, expulsion or extradition can be prohibited. Last, a ground of non-recognition in article 1(3) would severely damage mutual trust between judicial authorities on which the Framework Decision is based and would, as a result, make the principle of mutual recognition meaningless (...)".

Member State. The executing judicial authority is obliged to carry out a two-stage test. In the first phase, the objective and reliable elements, duly updated with respect to the situation in question, are established. In the second, to ascertain precisely whether there are serious and proven reasons to believe that the requested person really runs the risk of suffering this violation due to his surrender. Therefore the CJEU followed what is referred to in Regulation n. 2018/1805 interpreting for the first time the position that fundamental rights must reach a minimum of gravity as well as the refusal to recognize the seizure or confiscation order adopted by the competent authorities of the issuing Member State. In this case we cannot speak of violations that are attributable to systemic deficiencies or of a generalized nature (Wischmeyer, 2016; Rizcallah, 2019)[37].

Criminal judicial cooperation before and after Brexit

The United Kingdom has shown a tradition based on the intergovernmental method and opposed to deeper forms of integration (Spencer, 2012; Spencer, 2015) as we have noted in the case of sensitive policies and arguments within the Union such as that which characterize the aria of freedom, security and justice (AFSG), an environment based on differentiated

37Opinion 2/13, Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, ECJ, 18 December 2014, ECLI:EU:C:2014:2454.

integration (Guillard, 2007; Leuffen, Rittberger, Schimmelfelling, 2012).

We can refer to protocol no. 21 of the Treaty of Lisbon where according to art. 2 there is no provision for the TFEU regarding AFSG. Moreover, no international agreement or ruling of the CJEU has given a binding character to this sector (Mccartney, 2013; Blanchet, 2015; Fletcher, 2016)[38].

According to art. 3 of the same Protocol the British government could choose to take part in the adoption and/or application of the measure[39]. And according to art. 10, par. 5 of the protocol no. 36 gave the United Kingdom the opportunity to notify the Council at any time of its willingness to participate in acts of the former third pillar that were no longer in force for it. Therefore, the United Kingdom adhered to newly adopted measures (Perez-

38Further, article 10 of protocol no. 36 to the Lisbon Treaty. In paragraph 1, it was established: "(...) that for the first five years of the new treaty the limits placed on the supervisory powers of the Court of Justice and the European Commission concerning acts relating to judicial cooperation in criminal and police matters. In paragraph 4, it was added that, at the latest six months before the end of the transitional period identified in paragraph 1, the United Kingdom could have notified the Council of its intention not to accept the powers of the Court of Justice and the European Commission relating to the acts of the former third pillar, with the consequence that those acts would no longer be applicable to him (…)".

39Council Decision 2014/857/EU on the notification by the United Kingdom of Great Britain and Northern Ireland that it wishes to participate in certain provisions of the Schengen acquis contained in Union acts in the field of police cooperation and judicial cooperation in criminal matters and amending decisions 2000/365/EC and 2004/926/EC, of 1 December 2014, in OJ EU L 345 of 1 December 2014, pp. 1-5.

Rivas, 2017)[40], while, on the other[41], it participated in thirty-five acts of judicial cooperation in criminal matters that were favorable to its own interest (Banach-Gutierrez, 2020, pp. 56ss)[42].

Despite the British "fervor" for criminal judicial cooperation, they did not adhere to Directive 2014/42/EU relating to the freezing and confiscation of capital goods and proceeds from crime in the EU. However, it adhered to Regulation (EU) 2018/1805 as well as continued to be part of the Framework Decision 2006/783/JHA regarding the principle of mutual

40Directive 2011/99/EU of the European Parliament and of the Council on the European protection order, of 13 December 2011, in OJ EU L 338 of 21 December 2011, pp. 2-18 and Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, assistance and protection of victims of crime and replacing Framework Decision 2001/220/JHA of 25 October 2012, in OJ EU L 315 of 14 November 2012, pp. 57-73 and Directive 2014/41/EU, op. cit., pp. 1 ss.

41Commission Decision 2014/858/EU on the communication by the United Kingdom of Great Britain and Northern Ireland of its willingness to participate in Union acts in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty and which are not part of the Schengen acquis, of 1 December 2014, in OJ EU L 345 of 1 December 2014, pp. 6-9.

42Framework Decision 2005/214/JHA of the Council on the application of the principle of mutual recognition to financial penalties, of 24 February 2005, in OJ EU L 76 of 22 March 2005, pp. 16-30, the Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to criminal sentences imposing custodial sentences or measures depriving liberty, for the purpose of their execution in the European Union, of 27 November 2008, in OJ EU L 327 of 5 December 2008, pp. 27-46. Framework Decision 2009/829/JHA of the Council on the application between the Member States of the European Union of the principle of mutual recognition to decisions on alternative measures to pre-trial detention, of 23 October 2009, in OJ EU L 294 of 11 November 2009, pp. 20-40. The United Kingdom has shown: "(...) a strongly pragmatic attitude, revealed by the intention to adhere again to the only instruments suitable for fueling the effective contrast to deep-rooted and dangerous forms of transnational crime, avoiding otherwise the participation in acts that significantly affect the national judicial system, considered prodromal to the establishment of a denied European criminal justice system (…)".

recognition of confiscation orders as well as the Decision 2007/845/JHA on cooperation between offices of the Member States for asset recovery, retrieval and identification of the proceeds of crime or other related assets[43].

It is an ambiguous attitude that is presenting in the relative withdrawal of 17 October 2019 and continues in the context of the criminal judicial cooperation of the EAW, the Framework Decision 2008/909/JHA on interstate transfers of prisoners, the Framework Decision 2006/783/JHA on mutual recognition of decisions confiscation and last but not least in the measures contemplated and received by the competent authority of the executing Member State[44].

Judicial cooperation in criminal matters in the context of TCA of 24 December 2020 is seen to be less receptive and based on the path of British exceptionalism (Kaunert, Mackenzie, Lèonard, 2020), where the EU has agreed to define specific forms of collaboration (Schomburg, Oehmichen, 2021). Part III of the TCA defines legislation on the prevention, investigation, detection and prosecution of crimes (Ecks, Leino-Sandberg, 2022), prevention and countering of money laundering and terrorist financing to more reliable evidence such as data on

43Council Decision 2007/845/JHA on cooperation between the offices of the Member States for the recovery of assets in the sector of finding and identifying the proceeds of crime or other related assets, of 6 December 2007, in OJ EU L 332 of 18 December 2007, pp. 103-105.

44Pursuant to article 126 of the Withdrawal Agreement, as such meant the period between the date of entry into force of the Agreement and 31 December 2020.

DNA, fingerprints, vehicle registration and the broader cooperation between Europol and Eurojust including the surrender of wanted persons and for the purposes of prosecution, the execution of a sentence or deprivation of liberty, the freezing and confiscation of assets and proceeds of crime (Nicolaidis, 2017).

Seizure, confiscation and trade and cooperation agreement of 24 December 2020

The argument of seizure and confiscation of assets and proceeds of crime between the Member States and the United Kingdom was based on the Budapest and Warsaw Conventions that we referred to in the first paragraphs of our analysis, art. 656, para. 1 and 6[45].

The States must commit to broad support for identifying and tracing assets susceptible to confiscation that will respond to requests for information on bank accounts, safety deposit boxes and banking operations; as well as the performance of a control activity on these operations according to art. 658 and 660 (Arnell, Bock, Davies, Worner, 2021).

In the event that a State has initiated an investigation or a criminal proceeding, the requested State shall proceed with the seizure without delay and with the same temporal speed as used

45In article 667, letter b), it is clarified that the two terms are synonymous.

in similar cases according to the internal criminal code by transmitting the relative confirmation to the requesting State and by any means that allows to keep a record in writing.

In the event of confiscation, the requested State is expected to execute the order issued by a Court of the requesting State and/or submit the request to the competent national authorities with the aim of obtaining an order that will be executed in the near future. The requested State adopts the decision relating to the confiscation without delay and within 45 days of receipt of the request, carrying out the execution without delay and with the same speed and priority used for a similar internal case according to art. 665.

Obviously, the request for cooperation can be refused in the event that the law of the requested State does not provide for confiscation for the type of crime to which the request refers and/or if the limits set by domestic law on the matter are exceeded and the confiscation can be arranged for the lapse of time according to art. 670.

As regards the handling of requests for cooperation, the requested State recognizes any type of decision that comes from the judicial authority in the requesting State concerning the rights claimed by third parties as well as the possibility of opposing the related grounds for refusal. Denial that is envisaged when the decision is incompatible with another taken

into consideration in the requested State and on the same matter and/or in violation of the provisions on exclusive jurisdiction provided for by the domestic law of the requested State according to art. 675.

Trade and cooperation v. protection of human rights

Human rights and their related protection are reported in part III of the TCA accord[46]. In particular, art. 524 entitled as Protection of human rights and fundamental freedoms includes the respect that the EU, the member States and the United Kingdom have for democracy, the rule of law and the protection of fundamental rights and freedoms as also provided for by the Universal Declaration of Human Rights and in the context of the ECHR (Ashworth, 1999; Marchadier, 2014; Grabenwarter, 2014; Jayawickrama, 2017; Seibert-Fohr, Villiger, 2017)[47] providing

46The theme returns several times in the text of the TCA. The preamble reaffirms: "(...) the commitment of the contracting parties in favor of democratic principles, the rule of law, human rights (...)" also article 763, relating to the dispute resolution mechanism governed in the part VI, where it is envisaged that: "(…) 1. The parties continue to defend the shared values and principles of democracy, the rule of law and respect for human rights which underlie their internal and international policies. They reaffirm respect for the Universal Declaration of Human Rights and the international human rights treaties to which they are party. 2. The parties promote these shared values and principles in international fora. They cooperate to promote these values and principles, including with or in third countries (…)".

47It is not a notion of "criminal matter" which includes all the relative measures of an afflictive nature and general and special prevention as the final aim. This is also the way in which the punitive administrative offense also enters, as was also stated in the Ordnungswidrigkeiten of the German legal system (ECtHR: Oztürk of 21 February 1984); and the Austrian Verwaltungsstrafverfahren (ECtHR, Palaoro v. Austria of 23 October 1995, para. 38-47; Pramstaller v. Austria of 23 October 1995; Pfarrmeier v. Austria of 23 October 1995; Schmautzer v. Austria of 23 October 1995; Umlauft v. Austria of 23 October 1995; Gradinger v. Austria of 23 October 1995); the

that nothing modifies the obligation to respect fundamental rights and legal principles as enshrined in particular by Union law and specifically by the CFREU.

In the event of serious and systemic deficiencies within a part that concerns the protection of fundamental rights or the rule of law, art. 693, par. 1 provides that it may suspend Part III or some of its titles by means of written notification through diplomatic channels.

In the case of confiscation and seizure, reference can be made to art. 656, par. 5 which requests assistance in investigations or interim measures for the purposes of confiscation and the requesting State guarantees compliance with the principles of necessity and proportionality (O'Meara, 2021).

More attention is noted in art. 670 regarding the refusal of cooperation. The opposition of the execution of the request is considered with the principle of ne bis in idem and the case of confiscation orders derives from a decision pronounced *in*

imposition of a fine for the crime of tax evasion enters the notion of criminal matters as we saw in the case: A.P., M.P. and T.P. v. Switzerland and in case: J.B. v. Switzerland (ECtHR: J.B. v. Switzerland of 3 May 2001, par. 44; A.P., M.P. and T.P. and E.L., R.L. and J.O.-L. v. Switzerland of 29 August 2001); disciplinary sanctions as sanctions that merit the relative guarantees inherent in criminal procedure (ECtHR: Campbell v. Great Britain and Ireland of 28 June 1984). As well as proceedings for recovery of an unpaid community charge, as they are considered by the English "civil in nature" law (ECtHR: Benham v. Royaume-Uni of 19 June 1996); also the German detention security measure-the Sicherungsverwahnung (para. 66 StGB) (ECtHR; M. v. Germany of 17 December 2009). However, we have also noted that the jurisprudence of the ECtHR did not fall within the notion of criminal matters of forms of confiscation without conviction (ECtHR: Gogitidze v. Georgia of 12 May 2015, par. 105).

absentia. In this case, the requested State and the proceedings conducted by the requesting State did not respect the minimum rights of the defense. Within this scope, art. 675 which, among other things, provides for the recognition of foreign decisions that they can refuse in case that third parties claim rights on assets subject to seizure or confiscation that are not adequate assessed and consequently incompatible with the public order of the requested State.

Art. 689 guarantees to the States involved that the persons subject to seizure or confiscation orders have the relative means of appeal which are effective to protect their rights. The judicial authorities are obviously also involved in relation to the subjects involved in the cooperation system which is based on and implements the rights provided by the Union and also the terms of protection of these rights.

Undoubtedly, the TCA represents full compliance with Regulation (EU) 2018/1805 especially in the field of reasons for refusing cooperation and referring to ne bis in idem and the rights of the defense without providing for a general case and applicable to further hypotheses of rights (Peers, 2022). No reference was found referring to the fundamental principles of the national system of the State which asks as opposable limits to the request for cooperation. Position based on the Explanatory Notes of the European Union (Future Relationship) Act of 2020

which states that in relation to the seizure and confiscation the TCA respects the multilateral and proceeding treaties and according to: "(…) more limited grounds for refusal of a request allowing the broadest possible cooperation (…)" (Hameed, 2022)[48].

Mode of operation of human rights in the three types of control of confiscation and seizure

The first level of criminal judicial cooperation and especially in the field of seizure and confiscation dates back to the Conventions of 1990 and 2005 which put the first points of analysis and future study within the context of the Union.

Seizure and confiscation are not part of rights in themselves but enter the circle of a general scope of procedural and fundamental protection rights as subsidiaries to greater protection that has also been appreciated by national law. The Regulation (EU) 2018/1805 represented a significant evolution based on the principle of mutual recognition of a functional nature to allow a certain type of automatism in the execution of freezing and confiscation orders issued by the judicial authorities of the Member States involved. This is a more

48European Union (Future Relationship) Bill. Explanatory Notes, para 33. The European Union (Future Relationship) Act 2020, approved on 30 December 2020 and entered into force the following day. The act by which the British Parliament implemented the TCA. The Explanatory Notes, prepared by the Cabinet Office of the British government, are the basis of an interpretative and functional instrument for a better understanding of the basic text and are not binding.

efficient and rapid mechanism than that defined in the oldest conventions organized by the Council of Europe on the subject. Times have changed, new technologies allow for easier money trafficking and criminal judicial cooperation is increasingly finding space for effective and speedy collaboration to deal with difficult situations and above all to safeguard territorial integrity from terrorist attacks and beyond.

The typing of a specific reason for refusal of recognition and enforcement relating to this issue is a topic that finds ample space for reference to the judicial authorities (Verder, Heintschell Von Heinegg, 2018; Schwarze, Becker, Hatje, Schoo, 2019)[49]. In this spirit, we refer to part III of the TCA which allowed the return to systems of an intergovernmental nature (Bennett, Vines, 2022). It would have represented a

49Our analysis does not take into consideration all the paragraphs of the Regulation 2018/1805 and the related rights. However, we must take into account that there is a lack of notions for a fair trial as well as the protection of property. Perhaps because the EU legislator has considered that they are mandatory rights from other texts of a binding nature. On the other hand, we remember the situation of recent years in Poland and Hungary as well as the discussion of the rule of law and we understand that the aforementioned Regulation is not perfect. Situations of systemic and generalized deficiency are noted. Many doubts arise regarding the implementation and especially the existing property regime within the EU and in the Member States according to art. 345 TFEU. The cited article adopts the market economy model where the protection of property plays a central role. Even if there are no systemic or generalized deficiencies it does not mean that the right to property of any citizen of the EU cannot be violated. How will it be protected by a judicial authority of the issuing Member State which is unable to give a remedy before another Member State which is the executing State? And a fair trial raises the problem of establishing that in the case of a violation actually verified the EU must offer concrete solutions and also ascertain the provision of national laws as well as the possibility of appealing to ECtHR and for procedural economy to avoid such an appeal and to find a solution either out of court or through another way that will protect the property of the object involved.

severe blow in terms of loss of efficiency in the collaboration between EU Member States and the United Kingdom (Mitsilegas, 2017; Brière, 2020). The before or after Brexit has clearly shown an inclination towards Regulation (EU) 2018/1805, stopping the importance of the reasons for refusing cooperation as a hypothesis dedicated to the protection of fundamental rights. Leaving the related disputes concerning the execution and before the issue to the hands of the judicial authorities and not to the parties involved. Also art. 697 has provided for a related dispute resolution mechanism that can be activated and exclusively in the event that one of the parties is deemed to have violated an obligation deriving from part III and art. 524 which reaffirms the commitment of the contracting parties to respect fundamental rights.

As we have seen, the intergovernmental nature is presented in this case. The mechanism of ex art. 697 has a political and less legal nature since it is based on consultations in good faith between the parties and in the event that one of them is deemed to have violated an obligation deriving from the third party. The related consultations are concluded within 3 months, subject to the relative decision of the parties to continue them according to art. 698 and where the parties can reach an agreed solution and which are required to take the necessary measures for its implementation according to art. 699. When the related

consultations do not lead to an agreed solution, the party who initiated them and who believes that there is a serious violation may suspend the application of part III which refers to the violation and obviously the resolution of the dispute. The other party according to art. 700 can suspend all further titles of the same party. It is a mechanism that works according to a negotiation logic with all the difficulties that can be traced back to the negotiations between the European Union and the United Kingdom and especially after the Brexit period[50].

Within this circle of dispute resolution it can be doubted that the assessment as well as the related conduct is presented as a technical solution given that it proceeds to a functional result in favor of the emergence of a political compromise between the contracting parties. The risk remains that the protection of rights will be sacrificed with the ultimate goal of allowing Union and the United Kingdom to reach a fair and resolutive compromise. As also required by art. 692 relating to the complaint and suspension according to art. 693 of TCA which in reality are not included in this case just provided since the related suspension remains at the wide discretion of the executive and that the condition of serious deficiency and of a systemic nature is integrated.

50The TCA in criminal matters has defined a resolution mechanism that is completely different from the one that has been applied to the other parts of the agreement. This other mechanism usually provides for consultations between the parties and the formation of an arbitration panel (part VI, title I of the TCA).

The practice of TCA that we will see in the near future will certainly be very complex but at the same time essential since it will have as its main purpose to fill some gaps in criminal matters under examination between Member States of the EU. An open challenge that concerns, as we have noted from the previous articles of the TCA, the choices of integration and harmonization of national laws through the terms of judicial practice. Certainly some States have already initiated the relevant and ad hoc legislation in the sector but it is always open to extend *de facto* the role of the United Kingdom with its limited adaptations, and the procedures in the context of judicial cooperation of the EU (Luchtman, 2020). A further point of discussion remains the set-up of the standards of protection of fundamental rights which, in our opinion, will continue to follow the paths that are followed until now. That is, the jurisprudence of the CJEU which will continue to constitute an always stable point of reference and especially as regards the cases concerning the UK (Mitsilegas, 2021).

The role of the CJEU on judicial cooperation mechanisms in criminal matters

As we have foreseen, the dispute resolution provided for in part III of the TCA regardless of the will of the United Kingdom to definitively escape the influence of the CJEU reinvigorates

national sovereignty. The decisions of the CJEU are not advisory, but binding for Member States (Sammut, Agronovska, 2020) and their authorities and related jurisprudence have cultivated the ground for a high-level European integration with a wide margin of appreciation at national and now international level. Why do we say this? Because in the case of matters for extradition some interesting indications can be offered. The CJEU through its referrals, the extradition of a citizen of a Member State to a third State may occur in the event that the recipient of the extradition request is in a Member State other than that of citizenship.

We refer to the Petruhhin case, where the CJEU affirmed according to art. 3, par. 5 TEU that the Union affirms:

"(…) and promotes its values and interests by contributing to the protection of its citizens (…). Protection takes place through cooperation instruments such as extradition agreements (…)" (Kellernauer, Klamert, Tomkin, 2019).

In particular, in the case of extradition of a citizen of a Member State to a third State, the competent authority of the requested Member State can carry out a functional check for the protection of the fundamental rights of the subject by extraditing according to art. 19 CFREU, where it is established that collective expulsions are prohibited. No one may be removed or extradited to a State:

"(...) where there is a serious risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment (paragraph 2) (...)"[51].

51CJEU, C-182/15, Petruhhin of 6 September 2016, ECLI:EU:C.2016:630,

The violation of fundamental rights such as inhuman or degrading treatment must be assessed by the relative existence of the risk at the time of the extradition decision. The competent authority must be based on objective, concrete, precise and updated elements that may result from international judicial decisions, from the requesting third State as well as from decisions, reports and other documents prepared by the bodies of the Council of Europe or belonging to the system of the United Nations, in accordance with what happens in the system of the Union and especially after the cases[52].

The Aranyosi and Căldăraru cases are instrumental points of reference through the independent assessment, in third countries, that there is always an effective and concrete risk of infringement of fundamental rights. As a consequence that those States that intend to obtain the surrender of a subject, must also adapt to the Union protection standards as we have seen so far in the jurisprudential history of the CJEU in the following cases:

published in the electronic reports of the cases, which the CJEU: "(...) recognized that, in the absence of an extradition agreement between the Union and the requesting third State, it is necessary to apply the mechanisms of Community law in a way that is capable, at the same time, of protecting the rights of free movement and residence of European citizens and to promote the fight against the impunity of crimes. Therefore, it is necessary to proceed through an exchange of information between the requested Member State and the Member State of which the person to whom the extradition request is directed is a national, to verify whether the authorities of the second Member State intend to issue an EAW (…)".

52CJEU, C-182/15, Petruhhin of 6 September 2016, op. cit., par. 45-49, 58-60.

Peter Schotthöfer & Florian Steiner (Costa, 2017)[53], Pisciotti[54], Raugevicius (Mancano 2021)[55], Ruska Federacija[56], Generalstaatsanwaltschaft Berlin (Extradition vers l'Ukraine)[57] and Govenor of Cloverhil prison and others[58].

The standards of protection of fundamental rights defined in Union law are binding on the Union itself and its Member States and are also reference points for third States wishing to cooperate with the Union and its States. Given that it is a terrain that favors cooperation between Member States and in the event that there is no automatic character in favor of cooperation with third States (Marx, Wüsthof, 2015; Azoulai, 2016; Akrivopoulou, 2016)[59].

Not only for extradition but also for any other right, the CJEU can take a position applicable to the international instruments of judicial cooperation in criminal matters and applicable in

53CJEU, C-473/15, Peter Schotthöfer & Florian Steiner of 6 September 2017, ECLI:EU:C:2017:633, not yet published, par. 24-27.

54CJEU, C-191/16, Pisciotti of 10 April 2018, ECLI:EU:C:2018:222, published in the electronic reports of the cases.

55CJEU, C-247/17, Raugevicious of 13 November 2018, ECLI:EU:C:2018:898, published in the electronic reports of the cases.

56CJEU, C-897/19 PPU, Ruska Federacija of 2 April 2020, ECLI:EU:C:2020:262, not yet published.

57CJEU, C-398/19, Generalstaatsanwaltschaft Berlin (Extradition vers l'Ukraine) of 17 December 2020, ECLI:EU:C:2020:1032, not yet published.

58CJEU, C-479/21 PPU, Governor of Cloverhil prison and others of 16 November 2021, ECLI:EU:C:2021:929, not yet published.

59CJEU, C-362/14, Schrems of 6 October 2015, ECLI:EU:C:2015:650, published in the electronic reports of the cases, par. 73, which the CJEU affirms that: "(...) a third State must effectively ensure, in consideration of its national legislation or its international commitments, a level of protection of fundamental rights and freedoms substantially equivalent to that guaranteed within the Union to prevent the objectives pursued by EU law are being disregarded (...)".

relation to the international instruments of cooperation to the sector of execution of seizure and confiscation orders from third States. Member States are required to comply with the standards of protection provided by the principles of the Union and according to the interpretation of the CJEU to refuse to cooperate in the event that the request made by a third State does not comply with this type of standard.

With regard to third States, this behavior needs to comply with the aforementioned standards even if they have not contributed to their own elaboration to avoid their requests which may be rejected. The standards and the level of protection is lower than that established by the Union, where the cooperation can validly operate. The third State will have to make an adjustment in case it aims to continue to be identified as a reliable partner and to accept the related cooperation. The decision obviously not to comply is legitimate on the level of international law, as an end to collaboration with the State in question and for what concerns the issues under analysis.

Conclusions

From the analysis conducted so far, we have noted that the effectiveness of mechanisms both at the Convention level and also according to Regulation (EU) 2018/1805 is protected for purposes set up that change according to the cases.

The cited clauses of the Conventions give due importance to the protection of human rights obviously less at the regulatory level. There remains the appreciation of political and less judicial bodies with the risk that the discretion enjoyed may be exercised to those who believe they have suffered damage to their right.

A specific reason for refusal of recognition and enforcement concerning the protection of human rights provided for by Regulation (EU) 2018/1805 shows the systemic or generalized deficiencies. The relative assessment must be carried out by specific judicial bodies that are responsible for carrying out the relative establishment of the law whether it has been violated or not.

A third way, that of TCA, does not include a concrete reason for refusal relating to this issue. Cooperation needs the participation of both the judicial and the enforcement authorities. Disputes relating to the activation of the dispute resolution mechanism provided for in part III of the TCA are of a political nature and operate on the basis of a procedural level of a negotiating nature. Within this spirit, the interpretation of the CJEU as a subsidiary body to the sector that we analyze in a binding manner complies with the identified standards of protection and with reference to relations with third States and to all international mechanisms of judicial cooperation in criminal matters. The strength of the CJEU also came to the recognition of its role as a standard in

terms of fundamental rights as a manifestation of the obligation for the Member States that respect and promote and as is clear from the reading of articles 2, 6 and 49 TEU (Geiger, Khan, Kotzur, 2016; Decheva, 2018; Becker, Schwarze, Hatje, Schoo, 2019). An external protection that comes out of the national level that allows the Union to identify third States with the potential ability to determine a better level on the issue of human rights and the States involved. It always remains for the States to accept the primacy of the Union and to continue to have relations of cooperation with the Union or not.

References

Akrivopoulou, C.M. (2016). Safe harbour not to safe anymore: The European Court of Justice Judgment C-362/14, Maximillian Schrems versus Data Protection Commissioner. *International Journal of Human Rights and Constitutional Studies, 4 (1),* 87ss.

Anagnostaras, G. (2016). Mutual confidence is not blind trust! Fundamental rights protection and the execution of the European Arrest Warrant: "Aranyosi and Caldararu". *Common Market Law Review, 53,* 1675-1704.

Arnell, P., Bock, S., Davies, G., Worner, L. (2021). Police cooperation and exchange of information under the EU-UK Trade and Cooperation Agreement. *New Journal of European Criminal Law, 12,* 265ss.

Ashworth, A. (1999). (2) Article 6 and the fairness of trials. *Criminal Law Review, 46,* 262ss.

Azoulai, L. (2016). Institutionalizing personal data protection in times of global institutional distrust: Schrens. *Common Market Law Review, 53,* 1344ss.

Bachmaier, L. (2015). Mutual recognition instruments and the role of the CJEU: The grounds for non-execution. *New Journal of European Criminal Law, 5 (4),* 505ss.

Banach-Gutierrez, B. (2020). The surrender of prosecuted persons under the EAW procedure: Issues of transposition of EU criminal policy to the national level. *New Journal of European*

Criminal Law, 11 (1), 56ss.

Barnard, C., Peers, S. (2017). *European Union law.* Oxford University Press, Oxford, 586s.

Beck, L., Pivaty, A., Beazley, A., Daly, Y.M., Ter Vrugt, P. (2021). Opening pandora's box. The right to silence in police interrogations and the Directive 2016/343/EU. *New Journal of European Criminal law, 12 (3),* 328ss.

Becker, U., Schwarze, J., Hatje, A., Schoo, J. (2019). *EU-Kommentar.* ed. Nomos, Baden-Baden.

Bennett, A., Vines, D. (2022). The EU-UK trade and cooperation agreement lessons learned. *Oxford Review of Economic Policy, 38 (1),* 69ss.

Billet, C. Turmo, A. (2020). *Coopèration opèrationalle en droit pènal de l'Union europèenne.* ed. Larcier, Bruxelles.

Blanchet, T. (2015). The genesis of Protocol 36. *New Journal of European Criminal Law, 6,* 434-449.

Bloks, S.A., Van Den Brink, T. (2021). The impact on national sovereignty of mutual recognition in the AFSJ. Case study of the European Arrest Warrant. *German Law Journal, 22 (1),* 48ss.

Bouchl, L. (2014). Civil/asset forfeiture and the presumption of innocence under article 6(2) ECHR. *New Journal of European Criminal Law, 5 (2),* 222ss.

Boucht, J. (2019). Asset confiscation in Europe. Past, present, and future challenges. *Journal of Financial Crime,* 26, 526-548.

Bovend'eerdt, K. (2016). The joined cases Aranyosi and Căldăraru: A new limit to the mutual trust presumption in the Area of Freedom, Security and Justice?. *Utrecht Journal of International and European Law,* 32, 112ss.

Brière, C. (2020). Brexit and its consequences for cooperation in Criminal Matters. *European Law Blog,* 3 February 2020.

Broberg, M.P., Fenger, N. (2016). Preliminary references to the Court of Justice of the European Union and the right to a fair trial under article 6 ECHR. *European Law Review, 23 (4),* 602ss.

Carrera, S., Stefan, M., Mitsilegas, V. (2020). *Cross border data access in criminal proceedings and the future of digital justice. Navigating the current legal framework and exploring ways forward within the European Union and across the Atlantica.* Report of a CEPS and WMUL Task Force, 2020.

Čentéš, J., Beleš, A. (2018). Regulation of agent as a tool for combating organized crime. *Journal of Security and Sustainability Issues, 8(2),* 18, 32ss.

COSTA, J.J. (2017). The emerging European Union extradition law. Petruhhin and beyond. *New Journal of European Criminal Law, 8 (2),* 194ss.

Decheva, M. (2018). *Recht der europäischen Union.* ed. Nomos, Baden-Baden.

Dion, M. (2015). Is money laundering an ethical issue?. *Journal*

of Money Laundering Control, 18(4), 428ss.

Ecks, C., Leino-Sandberg, P. (2022). The EU-UK trade and cooperation agreement-Exceptional circumstances or a new paradigm for EU external relations?. *Modern Law Review, 81 (1),*168ss.

Evers, S. (2018). *Verhältnis des Vermögensnachteils bei der Untreue zum Vermögenschaden beim Betrug.* C.F. Müller, Tübingen, 282ss.

Fernandez-Bertier, M. (2016). The confiscation and recovery of criminal property: A European Union State of the art. *ERA Forum*, 17, 324ss.

Fernandez-Bertier, M. (2019). The history of asset deprivation: From the book of exodus to the war on white collar crime. In K. Ligeti, M. Simonato (eds.), *Chasing criminal money in the EU: Challenges and perspectives. On asset recovery in the EU.* Hart Publishing, Oxford-Portland, 51-73.

Fletcher, M. (2016). EU criminal law flexibility: What lessons from the UK Protocol No. 36 saga?. In V. Mitsilegas, M. Bergström, T. Konstadinides (eds), *Research handbook on EU criminal law.* Edward Elgar Publishers, Cheltenham, 80ss.

Foster, N. (2014). *European Union law directions.* Oxford University Press, Oxford, 51ss.

Gàspàr-Szilàgy, S. (2016). Joined cases Aranyosi and Căldăraru. Converging human rights standards, mutual trust and new

grounds for postponing a European arrest warrant. *European Journal of Crime, Criminal Law and Criminal Justice, 24 (1),* 198ss.

Geiger, R., Khan, D.E., Kotzur, M. (2016). *EUV/AEUV.* C.H. Beck, München.

Girard, B.P. (2017). Confiscation orders and judicial cooperation in the EU. In A. Marciano, G. Ramello, *Encyclopedia of law and economics.* ed. Springer, New York.

Glerum, V. (2020). Directive 2013/48/EU and the requested person's right to appoint a lawyer in the issuing Member State in European Arrest Warrant proceedings. *Review of European and Comparative Law, 41 (2),* 20ss.

Grabenwarter, C. (2014). *European Convention on human rights: ECHR.* C.H. Beck, München.

Guillard, C. (2007). *L'intégration differenciée dans l'Union européenne.* ed. Bruylant, Bruxelles.

Guiresse, M. (2016). Confiance mutuelle et mandat d'arrêt européen: Evolution ou inflexion de la Cour de justice?. *GDR-ELSJ,* 12 avril 2016.

Hameed, A. (2022). UK withdrawal from the European Union: Supremacy, indirect effect and retained European Union law. *Modern Law Review, 85 (3),*730ss.

Heimrich, C., Scharpf, M. (2022). Ne bis in idem in the context of an Interpol red notice. Effective law enforcement versus

fundamental rights (Case note on C-505/19 WS). *New Journal of European Criminal, Law, 13 (1),* 92ss.

Janssens, C. (2013). *The principle of mutual recognition in EU Law.* Oxford University Press, Oxford.

Jayawickrama, N. (2017). *The judicial application of human rights law national regional and international jurisprudence.* Cambridge University Press, Cambridge.

Kaunert, C., Mackenzie, A., Lèonard, S. (2020). "They need us more than we need them": British exceptionalism, Brexit, and justice and home affairs. *European Foreign Affairs Review, 25,* 573-588.

Kellerbauer, M., Klamert, M., Tomkin, J. (2019). *Commentary on the European Union treaties and the Charter of fundamental rights.* Oxford University Press, Oxford.

Klimek, L. (2017). *Mutual recognition of judicial decisions in European criminal law.* ed. Springer, Berlin, 2017.

Klip, A. (2021). European criminal law. An integrative approach. Intersentia, Cambridge/Antwerp.

Kruisbergen, E.W., Kleemans, E.R., Kouwenberg, R.F. (2016). Explaining attrition: Investigating and confiscating the profits of organized crime. *European Journal of Criminology,* 13, 677-695.

Kusak, M. (2019). Mutual admissibility of evidence and the European Investigation Order: Aspirations lost in reality. *ERA*

Forum, 19, 392ss.

Lebrun, G. (2016). De l'utilitè de l'article 47 de la Charte des droits fondamentaux de l'union europèenne. *Revue Trimestrielle des Droits de l'Homme,* 106, 433ss.

Lelieur, J. (2013). "Transnationalising" ne bis in idem: How the rule of ne bis in idem reveals the principled of personal legal certainty. *Utrecht Law Review, 9 (4),* 200ss.

Lelieur, J. (2015). Freezing and confiscating criminal assets in the European Union. *European Criminal Law Review, 3,* 279-303.

LENARTS, K. (2017). La vie après l'avis: Exploring the principle of mutual (yet not blind) trust. *Common Market Law Review, 54, 2017,* 805-840.

Leuffen, D., Rittberger, B., Schimmelfelling, F. (2012). *Differentiated integration. Explaining variation in the European Union.* Palgrave Macmillan, London.

Liakopoulos, D. (2019). Brexit y orden de detención europea. *Revista Derechos en Acciòn, 12 (2),* 512ss.

Liakopoulos, D. (2020). Mutual cooperation and criminal efficiency under Regulation (EU) 2018/1805 for the mutual recognition of freezing and confiscation measures. *Revista do Curso de Direito-UNIFOR, n. 11 (1),*107-146.

Ligeti, K., Simonato, M. (2017). *Chasing criminal money Asset recovery in the European Union.* Hart Publishing, Oxford &

Oregon, Portland, 132ss.

Luchtman, M. (2020). Transnational law enforcement cooperation. Fundamental rights in European cooperation in criminal matters. European Journal of Crime. *Criminal Law and Criminal Justice, 28,* 14ss.

Mak, C. (2012). Rights and remedies: Article 47 EUCFR and effective judicial protection in European private law matters. *Amsterdam Law School Research Paper No. 2012-88. Centre for the Study of European Contract Law Working Paper Series No. 2012-11.*

Mancano, L. (2021). Trust thy neighbour? Compliance and proximity to the European Union through the lens of extradition. *Yearbook of European Law, 40 (1),* 478ss.

Mansell, D. (2011). The European arrest warrant: The role of Judges when human rights are at risk. *New Journal of European Criminal Law, 2 (1),*133ss.

Marchadier, F. (2014). Convention européenne des droit de l'homme et des libertès fondamentales. *Revue Critique de Droit International Privè, 193 (4),* 679-694.

Marx, L., Wüsthof, L., (2015). CJEU shuts down safe harbor for transatlantic data transfer-Case C-362/14 Maximilian Schrems v. Data Protection Commissioner. *Journal of European Consumer and Market Law, 4 (6),* 243ss.

Maymir, S.V. (2020). Anchoring the need to revise cross-border

access to e-evidence. *Internet Policy Review, 9 (3).*

Mccartney, C. (2013). Opting in and opting out: Doing the hokey cokey with EU policing and judicial cooperation. *New Journal of European Criminal Law, 77,* 543-561.

Miettinen, S. (2013). *Criminal law and policy in the European Union.* ed. Routledge, London & New York.

Mitsilegas, V. (2003). *Money laundering counter-measures in the European Union: A new paradigm of security governance versus fundamental legal principles.* Kluwer Law International, The Hague-London-New York.

Mitsilegas, V. (2017). European criminal law without the United Kingdom? The triple paradox of Brexit. *New Journal of European Criminal Law, 8,* 437-438.

Mitsilegas, V. (2021). A new special relationship or a damage limitation exercise? EU-UK criminal justice cooperation after Brexit. *New Journal of European Criminal Law, 12,* 105ss.

Mitsilegas, V., Gilmore, B. (2007). The EU legislative framework against money laundering and terrorist finance: A critical analysis in the light of evolving global standards. *The International and Comparative Law Quarterly, 56,* 119-140.

Muller, W.H., Kälin, C.H., Goldsworth, J.G. (2007). *Anti-money laundering. International law and practice.* ed. John Wiley & Sons, Chichester.

Niblock, R. (2016). Mutual recognition, mutual trust?: Detention

conditions and deferring an EAW. *New Journal of European Criminal Law, 24 (2),* 250ss.

Nicolaidis, K. (2017). Mutual recognition: Promise and denial, from sapiens to Brexit. *Current Legal Problems, 70,* 18ss.

Nilsson, H.G. (1991). The Council of Europe laundering Convention: A recent example of a developing international criminal law. *Criminal Law Forum, 2,* 419-441.

O'Meara, C. (2021). *Necessity and proportionality and the right of self-defence in international law.* Oxford University Press, Oxford.

Oliveria e Silva, S. (2022). Regulation (EU) 2018/1805 on the mutual recognition of freezing and confiscation orders: A headlong rush into Europe-wide harmonisation?. *New Journal of European Criminal Law, 13,* 200ss.

Panzavolta, M. (2019). Confiscation and the concept of punishment: Can there be a confiscation without a conviction?. In K. Ligeti, M. Simonato (eds.), *Chasing criminal money in the EU: Challenges and perspectives. On asset recovery in the EU.* Hart Publishing, Oxford-Portland, 25-52.

Patricio, H. (2014). The European arrest warrant ion the case law of the Court of Justice. *UNIO EU Law Journal,* 64ss.

Peers, S. (2022). So close yet so far. The EU/UK trade and cooperation agreement. *Common Market Law Review, 59 (1),* 52ss.

Perez-Rivas, N. (2017). The European model of victim status. *Díkaion, 26 (2)*.

Riehle, C., Clozel, A. (2020). 10 years after the roadmap: Procedural rights in criminal proceedings in the EU today. *ERA Forum, 20,* 323ss.

Rizcallah, C. (2019). The challenges to trust-based governance in the European Union: Assessing the use of mutual trust as a driver of EU integration. *European Law Journal, 25,* 37-56.

Rusu, I. (2016). European investigation order in criminal matters in the European Union. General considerations. Some critical opinions. *Juridical Tribune, Bucharest Academy of Economic Studies, Law Department, 6(1),* 58ss.

Saffian, M., Düsterhau, D. (2014). A Union of effective judicial protection: Addressing a multi-level challenge through the lens of article 47 CFREU. *Yearbook of European Law, 33 (1),* 3ss.

Sammut, I., Agronovska, J. (2020). *Implementing and enforcing EU criminal law. Theory and practice.* Eleven International Publishing, The Hague.

Schomburg, W., Oehmichen, A. (2021). Brexit: First observations on the EU-UK trade and cooperation agreement in criminal law. *New Journal of European Criminal Law, 12,* 193-201.

Schwarze, J., Becker, V., Hatje, A., Schoo, J. (2019). *EU-Kommentar.* ed. Nomos, Baden-Baden.

Seibert-Fohr, A., Villiger, M.E. (2017). *Judgments of the European Convention of Human Rights. Effects and implementation.* ed. Nomos, Baden-Baden.

Simonato, M. (2017). Confiscation and fundamental rights across criminal and non-criminal domains. *ERA Forum, 18,* 372ss.

Simonato, M. (2015). Directive 2014/42/EU and non-conviction based confiscation: A step forward on asset recovery?. *Journal of European Criminal Law, 6 (2),* 114ss.

Smith, E. (2013). Running before we can walk? Mutual recognition at the expense of fair trials in Europe's Area of Freedom, Justice and Security. *New Journal of European Criminal Law, 3 (1),* 82ss.

Soo, A. (2017). How are the member States progressing on transpositivy of Directive 2013/48/EU on the right of access to a lawyer? An inquiry conducted among the member States with the special focus on how article 12 is transpassed. *New Journal of European Criminal law, 8 (1),* 66ss.

Spencer, J.R. (2012). Who's afraid of the big, bad european public prosecutor?. *Cambridge Yearbook of European Legal Studies, 14,* 363-380.

Spencer, J.R. (2015). The UK and EU criminal law: Should we be leading, following or abstaining?. In V. Mitsilegas, P. Alldridge, L. Cheliotis (eds), *Globalisation, criminal law and*

criminal justice. Theoretical, comparative and transnational perspectives. Hart Publishing, Oxford-Portland, 135-152.

Stessens, G. (2000). *Money laundering. A new international law enforcement model.* Cambridge University Press, Cambridge.

Suominen, A. (2011). *The principle of mutual recognition in cooperation in criminal matters.* Cambridge University Press, Cambridge.

Swoboda, S. (2015). The self-perception of the European Court of Justice and its neglect of the defense perspective in its preliminary rulings on judicial cooperation in criminal matters: A small note on a fundamental misunderstanding. *Zeitschrift für Internationale Strafrechtsdogmatik,* 361ss.

Sybesma-Knol, N. (2014). The European system for the promotion and protection of human rights. *Georgia Journal of International & Comparative Law, 20.*

Szijártó, I. (2021). The implications of the European Investigation Order for the protection of fundamental rights in Europe and the role of the CJEU. *Pécs Journal of International and European Law, 1,* 68ss.

Tatham, A.F. (2021). Interpreting the EU-UK trade and cooperation agreement before british courts. *UNIO EU Law Journal, 7 (2),* 20ss.

Thunberg Schunke, M. (2017). *Extended confiscation in criminal law.* ed. Intersentia, Cambridge, Antwerp.

Tinsley, A. (2013). Protecting criminal defence rights through EU Law: Opportunities and challenges. *New Journal of European Criminal Law, 3 (3),* 461ss.

Tosza, S. (2020). All evidence is equal, bur electronic evidence is more equal thank any other: The relationship between the European investigation order and the European production order. *New Journal European Criminal Law, 11 (2),* 163ss.

Unger, B. et al. (2014). *The economic and legal effectiveness of the European Union's anti-money laundering policy.* Edward Elgar Publishers, Cheltenham.

Verder, C., Heintschell Von Heinegg, W. (2018). *Europäisches Unionsrecht, EUV/AEUV/EAGV. Hand Kommentar.* Nomos, Dike Verlag, Baden-Baden, Zurich.

Vermeulen, C. (2017). *Essential texts on international and European criminal law.* ed. Maklu, The Hague.

Vervaele, A.E. (2015). Mutual legal assistance in criminal matters to control (transnational) criminality. In N. Boister, R.J. Currie (eds.), *Handbook of transnational criminal law.* ed. Routledge, London & New York, 123ss.

Villiger, M.E. (2020). Handbuch der Europäischen Menshenrechtskonvention (EMRK), Schulthess, Zurich.

Wischmeyer, R. (2016). Generating trust through law? Judicial cooperation in the European Union and the "principle of mutual trust". *German Law Journal, 17,* 339-382.